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[Signature]

PATENT  
Customer No. 22,852  
Attorney Docket No. 05725.1017

**BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Application of: )  
)  
Jean-Louis H. GUERET ) Group Art Unit: 3751  
)  
Application No.: 10/060,234 ) Examiner: H. Le  
)  
Filed: February 1, 2002 )  
)  
For: DEVICE FOR APPLYING A ) Confirmation No.: 8084  
PRODUCT )

**Mail Stop Appeal Brief--Patents**  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

**TRANSMITTAL OF APPEAL BRIEF (37 C.F.R. 41.37)**

Transmitted herewith is the APPEAL BRIEF (20 pages with Claims Appendix, Evidence Appendix, and Related Proceedings Appendix (28 pages)) in this application pursuant to the Notice of Appeal filed on February 24, 2005.

This application is on behalf of

☐ Small Entity ☒ Large Entity

Pursuant to 37 C.F.R. 41.20(b)(2), the fee for filing the Appeal Brief is:

☐ \$250.00 (Small Entity)

☒ \$500.00 (Large Entity)

**TOTAL FEE DUE:**

Appeal Brief Fee \$500.00

Extension Fee (if any) \$120.00 (1 month)

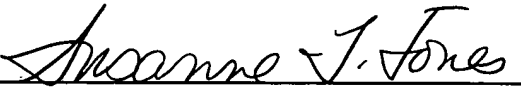
Total Fee Due \$620.00

☒ Enclosed is a check for \$620.00 to cover the above fees.

PETITION FOR EXTENSION. If any extension of time is necessary for the filing of this Appeal Brief, and such extension has not otherwise been requested, such an extension is hereby requested, and the Commissioner is authorized to charge any necessary fees not otherwise accounted for to obtain such an extension to our Deposit Account No. 06-0916.

FINNEGAN, HENDERSON, FARABOW,  
GARRETT & DUNNER, L.L.P.

Dated: May 24, 2005

By:   
Susanne T. Jones  
Reg. No. 44,472



PATENT  
Customer No. 22,852  
Attorney Docket No. 05725.1017

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: )  
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**Mail Stop Appeal Briefs**  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

**APPEAL BRIEF UNDER BOARD RULE § 41.37**

In support of the Notice of Appeal filed February 24, 2005, and further to Board Rule 41.37, Appellant presents this brief and encloses herewith a check for the appeal brief fee of \$500.00. A request for a one-month extension of time and appropriate fee payment is filed herewith to extend the due date for filing this Appeal Brief to May 24, 2005.

This Appeal Brief responds to the August 24, 2004 final rejection of claims 1, 3-9, 11-17, 22-51, 60-67, 70-83, 85-91, 96-108, 110, 112-116, 118-121, 123, 132, 133, 135-141, 144-156, 158-164, 169-182, 184-192, 194, 203, 204, and 206-212, and the Advisory Action mailed February 25, 2005.

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If any additional fees are required or if the enclosed payment is insufficient,  
Appellant requests that the required fees be charged to Deposit Account No. 06-0916.

**Real Party In Interest**

L'Oréal S.A. is the real party in interest.

**Related Appeals and Interferences**

There are currently no other appeals or interferences, of which Appellant, Appellant's undersigned representative, or Assignee are aware, that will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**Status Of Claims**

Claims 1, 3-9, 11-83, 85-108, 110, 112-116, 118-121, 123-128, 130-133, 135-156, 158-182, 184-192, 194-199, 201-204, and 206-214 are pending. Claims 2, 10, 84, 109, 111, 117, 122, 129, 134, 157, 183, 193, 200, and 205 have been canceled. Claims 1, 3-9, 11-17, 22-51, 60-67, 70-83, 85-91, 96-108, 110, 112-116, 118-121, 123, 132, 133, 135-141, 144-156, 158-164, 169-182, 184-192, 194, 203, 204, and 206-212 are rejected. Claims 18-21, 52-59, 68, 69, 92-95, 124-128, 130, 131, 142, 143, 165-168, 195-199, 201, 202, 213, and 214 have been withdrawn from consideration. The final rejection of claims 1, 3-9, 11-17, 22-51, 60-67, 70-83, 85-91, 96-108, 110, 112-116, 118-121, 123, 132, 133, 135-141, 144-156, 158-164, 169-182, 184-192, 194, 203, 204, and 206-212 is at issue in this appeal. Those rejected claims are set forth in an attached Appendix.

**Status Of Amendments**

No amendment has been filed subsequent to the final rejection in the Office  
Action dated August 24, 2004.



### **Summary Of Claimed Subject Matter**

An embodiment of the invention, as set forth in independent claim 1, for example, includes a device (10), as shown for example in Figs. 1A-1C, 2A-2D, 3A-3D, and 5, for applying a product comprising a first portion (20) defining a recess (21) and a second portion (30) moveable with respect to the first portion (20) so as to selectively place the device in one of a closed position (e.g., Figs. 1C, 2B, and 3D) and an open position (e.g., Figs. 1A, 2D, and 3A). (Application at paras. [053], [061], and [068]). The first portion (20) and the second portion (30) may define a substantially closed reservoir (50) when the device (10) is in the closed position. (Application at paras. [053], [061], and [064]). The device (10) may further comprise an application member (40) attached to the second portion (30). (Application at paras. [054], [061], and [065]). The application member (40) may be at least partially compressible and configured such that, when the device (10) is in the closed position, the application member (40) is at least partially compressed inside the substantially closed reservoir and, when the device (10) is moved from the closed position to the open position, the application member (40) becomes substantially uncompressed. (Application at paras. [054], [055], [057], [061], and [066]). The application member (40) may also be configured so that when the application member (40) is uncompressed, the application member (40) is capable of being loaded with substantially all of an amount of product that the device (10) is capable of containing. (Application at paras. [058], [063], and [069]).

Another embodiment of the invention, as set forth in independent claim 71, for example, includes a device (10), as shown for example in Figs. 1A-1C, 2A-2D, 3A-3D,

and 5, for applying a product comprising a first portion (20) comprising an impermeable surface, the first portion (20) defining a recess (21), and a second portion (30) moveable with respect to the first portion (20) so as to selectively place the device (10) in one of a closed position (e.g., Figs. 1C, 2B, and 3D) and an open position (e.g., Figs. 1A, 2D, and 3A). (Application at paras. [053], [061], and [064]). In the closed position, the recess (21) of the first portion (20) and the second portion (30) define a substantially closed reservoir (50) and the substantially closed reservoir (50) contains a cosmetic product intended for application to a surface. (Application at paras. [053], [061], [064], and [069]). The device (10) may further comprise an application member (40) attached to the second portion (20) that is at least partially compressible and configured to be in contact with the impermeable surface. (Application at paras. [054], [057], [061], [063], and [066]). The application member (40) may be at least partially compressed inside the substantially closed reservoir when the device is in the closed position. (Application at paras. [054], [055], [057], [061], and [066]).

Yet another embodiment of the invention, as set forth in independent claim 144, for example, includes a device (10), as shown for example in Figs. 1A-1C, 2A-2D, 3A-3D, and 5, for applying a product comprising a first portion (20) comprising an impermeable surface and defining a recess (21), and a second portion (30) moveable with respect to the first portion (20) so as to selectively place the device (10) in one of a closed position (e.g., Figs. 1C, 2B, and 3D) and an open position (e.g., Figs. 1A, 2D, and 3A). (Application at paras. [053], [061], and [068]). In the closed position, the recess (21) of the first portion (20) and the second portion (30) define a substantially closed reservoir (50). (Application at paras. [053], [061], and [064]). The device (10)

may further comprise an application member (40) attached to the second portion (30), the application member (40) being at least partially compressible and configured such that, when the device (10) is in the closed position, the application member (40) is at least partially compressed inside the substantially closed reservoir (50). (Application at paras. [054], [057], [061], and [066]). The reservoir (50) may contain a layer of cosmetic product intended to be applied to a surface and the layer of cosmetic product may contact both the application member (40) and the impermeable surface. (Application at paras. [053], [057], [061], [063], and [069]).

A device having an application member that is at least partially compressed inside a substantially closed reservoir when the device is in a closed position, in combination with the other respective features recited in claims 1, 71, and 144, is neither anticipated nor rendered obvious by the prior art cited in the Final Office Action.

**Grounds of Rejection To Be Reviewed**

Claims 1, 3-9, 11-17, 22-51, 60-67, 70-83, 85-91, 96-108, 110, 112-116, 118-121, 123, 132, 133, 135-141, 144-156, 158-164, 169-182, 184-192, 194, 203, 204, and 206-212 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 4,519,795 to Hitchcock, Jr. et al. in view of U.S. Patent No. 4,594,835 to Gray. This is the sole rejection in the Final Office Action.

### **Argument**

At pages 2-3 of the Final Office Action, claims 1, 3-9, 11-17, 22-51, 60-67, 70-83, 85-91, 96-108, 110, 112-116, 118-121, 123, 132, 133, 135-141, 144-156, 158-164, 169-182, 184-192, 194, 203, 204, and 206-212 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 4,519,795 to Hitchcock, Jr. et al. ("Hitchcock") in view of U.S. Patent No. 4,594,835 to Gray ("Gray"). Each of independent claims 1, 71, and 144 recites a device comprising, among other things, an "application member... at least partially compressed inside the substantially closed reservoir" "when the device is in the closed position." Applicant respectfully traverses the final rejection of independent claims 1, 71, and 144, and their respective dependent claims 3-9, 11-17, 22-43, 45-51, 60-67, 70, 72-83, 85-91, 96-108, 110, 112-116, 118-121, 123, 132, 133, 135-141, 145-156, 158-164, 169-182, 184-192, 194, 203, 204, and 206-212, based on the hypothetical combination of Hitchcock and Gray since a *prima facie* case of obviousness has been established.

#### **A. THE DISCLOSURES OF HITCHCOCK AND GRAY**

##### **1. Hitchcock**

Hitchcock discloses a disposable swab for application of medicament and the like to skin. Referring to Figs. 1-3, Hitchcock discloses a disposable swab 10 comprising a flat sheet-like strip 12. A pad member 14 may comprise polyester sponge material or any other absorbent pad-like material as may be desired for use, secured by adhesive or heat sealing to the foil face 16 of the flat, sheet-like strip 12. (See Hitchcock, col. 3, lines 22-26). Hitchcock discloses that the pad member 14 is impregnated with a

medicament and the like. (See Hitchcock, col. 3, lines 26-27). Opposed terminal portions 20 of strip 12 may be folded rearwardly relative to pad 4, as shown in FIGS. 3 and 4 of Hitchcock, and pinched by the fingers together into flat, abutting relation to serve as a finger-grippable handle portion, for holding the disposable swab during the swabbing process. (See Hitchcock, col. 3, lines 36-43).

Hitchcock further discloses that the pad member 14 is enclosed in a frangible pouch 32 to completely enclose the pad 14. (See Hitchcock, col. 3, lines 51-55). A conventional tear tab 34 may be provided for easy manual tearing removal of frangible pouch 32 for exposure of the pad 14. Thereafter, Hitchcock teaches that swab 10 may be used, transferring the impregnated medicament stored in the pad 14 to the skin. The swab may then be disposed of. (See Hitchcock, col. 3, lines 55-60). Hitchcock contains no disclosure or suggestion whatsoever that any medicament is placed directly in the pouch 32, other than that medicament with which the pad member 14 is impregnated. Nor does Hitchcock contain any disclosure that the pad member 14 is compressed to any degree when it is disposed in the pouch 32.

## 2. Gray

Gray discloses a method for making sachets having a pocket (labeled 5 in Fig. 2 of Gray) in a sheet of film or foil. The method includes placing a measured amount of liquid into the pocket (See Gray, col. 1, lines 63-66 and col. 2, lines 56-58) and placing a carrier (labeled 10 in Fig. 2 of Gray) into the pocket. A second film or foil (labeled 1 in Fig. 2 of Gray) is then placed over the pocket containing the liquid and carrier 10 and the second film is sealed to the pocket in such a manner so as to compress the carrier 10 in the pocket 5. In use, Gray discloses that upon opening the sachet, the carrier

resumes its original size and takes up further quantities of liquid from the pocket. (See Gray, col. 2, lines 7-9 and col. 3, lines 4-7.)

**B. THE FINAL OFFICE ACTION FAILS TO ESTABLISH A *PRIMA FACIE* CASE OF OBVIOUSNESS TO COMBINE HITCHCOCK AND GRAY**

To establish a *prima facie* case of obviousness under 35 U.S.C. § 103, three basic criteria must be satisfied. First, “there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify a reference or to combine reference teachings.” M.P.E.P. § 2142, Original 8th ed., Rev. 2, May 2004, p. 2100-128. Second, “there must be a reasonable expectation of success.” *Id.* Third, “the prior art reference (or references when combined) must teach or suggest all the claim limitations.” *Id.* Moreover, “[t]he teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant’s disclosure.” (citing In re Vaeck, 947 U.S.P.Q.2d (BNA) 1438 (Fed. Cir. 1991)). *Id.* In other words, hindsight may not be relied on in establishing a *prima facie* case of obviousness. In addition, when a proposed modification of a prior art reference changes the principles of operation explicitly taught in that reference, such a modification is insufficient to render the claims *prima facie* obvious. See M.P.E.P. § 2143.01.

The Section 103 rejection based on Hitchcock and Gray fails to satisfy at least the first and third requirements necessary to establish a *prima facie* case of obviousness.

1. The Final Office Action Fails to Provide Any Suggestion or Motivation to Modify Hitchcock With Gray in the Manner Proposed

In the Final Office Action, the Examiner recognizes, as discussed above, that the “Hitchcock, Jr. et al. reference does not specifically disclose that when the device [is] in a closed position, the application member is at least partially compressed inside the reservoir.” (Final Office Action at page 2). Similarly, in the Advisory Action, the Examiner states that Hitchcock “does not specifically disclose . . . the pad member being compressed.” (Advisory Action at item no. 11). To cure this acknowledged deficiency of Hitchcock, the Examiner relies on Gray, asserting that

it would have been obvious to one of ordinary skill in the art at the time the invention was made to compress the application member in the reservoir of Hitchcock, Jr. et al device in view of the teaching of the Gray reference for allowing the application member to take all product inside the reservoir when it expands to the uncompressed state upon withdrawal from the open reservoir.

(Final Office Action at page 3). In the Advisory Action, the Examiner states that “[c]ombining the references within the same art would be obvious to one of ordinary skill in the art so that the pad can be completely and thoroughly impregnated with medicament liquid.” (Advisory Action at item no. 11).

However, to modify Hitchcock with the teachings of Gray in this hypothetical manner, as proposed by the Examiner, would destroy the explicit teachings and principles of operation of the Hitchcock device. That is, as discussed above, Hitchcock explicitly teaches a device wherein the swab 10 is impregnated with medicament **prior** to placing it in the pouch 32. To compress the swab 10 of the Hitchcock device in the pouch 32, as suggested by the Examiner in the Final Office Action, would cause medicament to be expelled from the swab 10, in which case the swab 10 would no



longer be impregnated. Such expelling of medicament from the swab 10 via compression in the pouch 32 goes against the explicit teachings of Hitchcock to provide an impregnated swab 10 in the pouch 32.

Moreover, Hitchcock does not disclose filling the pouch 32 with the medicament prior to placement of the swab 10 in the pouch 32. Instead, Hitchcock explicitly teaches impregnating the swab 10, and not pouch 32, with the medicament, and then placing the impregnated swab 10 in the pouch 32.<sup>1</sup> Quite the contrary and against this teaching of Hitchcock, Gray explicitly teaches **not** to impregnate the carrier 10 prior to placing it in the pocket 5, but rather teaches to fill the pocket 5 with an amount of liquid and then to place and to compress the carrier 10 in the pocket 5. (Gray, col. 1, line 63 through col. 2, line 5, and col. 2, lines 36-43.)

Thus, ordinary skilled artisans would not have been motivated to modify the Hitchcock device with the teachings of Gray in the manner suggested by the Examiner since Hitchcock and Gray teach exactly opposite methods and against the hypothetical modification suggested by the Examiner. In other words, one of ordinary skill in the art would not have turned to Gray to modify Hitchcock because the principle of operation of Gray relies on a carrier that is **not** impregnated prior to sealing and compressing the carrier in the sachet, whereas the principle of operation of the device taught by Hitchcock requires impregnation of the swab 10 prior to placing it in the pouch 32 and while it is in the pouch 32. The modification proposed in the Final Office Action changes and destroys the principles of operation explicitly taught in both Hitchcock and Gray,

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<sup>1</sup> Appellant notes that in the Advisory Action at item no. 11, the Examiner states that Hitchcock "shows the pad member being impregnated with medicament, but does not specifically disclose how the pad is being impregnated." Appellant disagrees with this statement to the extent that Hitchcock does specifically disclose that the pad member 14 is impregnated prior to being placed in the pouch 32.

and as such, is insufficient to render the claims *prima facie* obvious. See M.P.E.P. § 2143.01.

Thus, for the reasons explained above, the final rejection based on Hitchcock in view of Gray is devoid of any evidence of an alleged motivation to combine Hitchcock and Gray in the manner suggested. For at least these reasons, a *prima facie* case of obviousness has not been established.

2. The Examiner Improperly Relies on Hindsight and Applicant's Own Disclosure as the Purported Motivation to Combine Hitchcock and Gray

Instead of finding any proper suggestion or motivation to combine references, the first requirement of a *prima facie* case of obviousness, the Examiner appears to be relying on the teachings of the present application to modify Hitchcock with Gray. Indeed, the Examiner attempts to use Appellant's own disclosure in a hindsight fashion, as clearly prohibited by In re Vaeck.

At page 3 of the Final Office Action, the Examiner asserts that it would have been obvious to modify the noncompressed pad member 14 of Hitchcock with the compressed carrier 10 of Gray "for allowing the application member to take all product inside the reservoir when it expands to the uncompressed state upon withdrawal from the open reservoir." (Final Office Action at page 23).

Nothing supports the Examiner's assertion. Neither Hitchcock nor Gray discloses either the pad member 14 (which is not even compressed in the pouch 32) or the carrier 10 expanding to take up the medicament or liquid, respectively taught in those references. Indeed, as mentioned above, Hitchcock explicitly describes loading the pad member 14 with medicament prior to inserting it into the pouch 32; Hitchcock does not disclose or otherwise suggest placing any other medicament in the pouch 32.

And Gray does not teach that the carrier 10 takes up liquid from the sachet upon expansion and withdrawal from the sachet. Contrary to the Examiner's assertion, Gray explicitly teaches how to obtain further loading of the carrier 10 with product while in the sachet, describing that "[p]enetration of liquid into the carrier may be assisted by manipulation, for example compression through nip rolls, of the sachet or pressure cycling." (Gray at col. 2, lines 9-12).

Thus, both Hitchcock and Gray teach impregnation of the pad member 14 or carrier 10 either prior to (Hitchcock) or while (Gray) in the respective pouch 32 or pocket 5 taught in each reference, and do not disclose or otherwise suggest any expansion of the pad member 14 or carrier 10 as a way of taking up product.

On the other hand, however, in an exemplary aspect, Appellant's application teaches a device, in Figs. 1C for example, wherein

the user may open the lid 30, which may cause the foam applicator to relax and expand. If any product remains in the bottom of the recess 22, it may be pumped out by the expansion of the foam at the time of opening the device. Practically all the product contained in the device 10 may therefore be loaded on (i.e., carried by) the application member 40.

(Application at page 14, para. [058]).

Thus, to provide the purported motivation to combine Hitchcock and Gray, the Examiner apparently relies on Appellant's own disclosure that teaches to move the device to an open position so that the application member can become uncompressed and capable of being loaded with substantially all of an amount of product that the device is capable of containing. Such reliance on Appellant's disclosure and use of hindsight, however, is completely improper. The Examiner has ignored the guidance set forth in M.P.E.P. § 2142, which explains that "[k]nowledge of applicant's disclosure

must be put aside in reaching this [obviousness] determination” and “impermissible hindsight must be avoided and the legal conclusion must be reached on the basis of the facts gleaned from the prior art.”

Although M.P.E.P. § 2142 allows the applicant’s disclosure to be “kept in mind in order to determine the ‘differences,’ conduct the search and evaluate the ‘subject matter as a whole’ of the invention,” it clearly warns against relying on that disclosure as a teaching of the missing subject matter of a reference or to provide the motivation to modify the reference to supply the missing subject matter. In this case, the Examiner went beyond looking to Appellant’s own disclosure in order to determine differences, conduct the search, and evaluate the subject matter of the invention. Rather, and contrary to the legal requirement to avoid hindsight, the Examiner relies on Appellant’s disclosure to supply motivation. As such, the Examiner has not properly established a *prima facie* case of obviousness and the final rejection based on Hitchcock and Gray should be withdrawn.

**C. THE SECTION 103 REJECTION OF CLAIMS 1, 3-9, 11-17, 22-51, 60-67, 70-83, 85-91, 96-108, 110, 112-116, 118-121, 123, 132, 133, 135-141, 144-156, 158-164, 169-182, 184-192, 194, 203, 204, AND 206-212 BASED ON HITCHCOCK AND GRAY SHOULD BE WITHDRAWN**

As discussed above in Section A.1, Hitchcock does not disclose or otherwise suggest an “application member . . . at least partially compressed inside the substantially closed reservoir” “when the device is in the closed position,” as recited in independent claims 1, 71, and 144. Indeed, the Examiner acknowledges this lack of disclosure in Hitchcock in the Final Office Action.

Further, for the various reasons explained above in Section B.1, the Final Office Action does not establish a *prima facie* case of obviousness to modify Hitchcock with the purported teachings of Gray, as suggested in the final Office Action. That is, the Examiner has provided insufficient motivation to modify Hitchcock based on Gray in the manner suggested in the Final Office Action, especially since to do so would destroy the explicit teachings and principles of operation set forth in each of those references. Moreover, as also explained above in Section B.2, the Examiner's final rejection of the claims is based on improper reliance on hindsight and the teachings of Appellant's own disclosure.

For at least the above reasons, the Final Office Action fails to establish a *prima facie* case of obviousness of claims 1, 71, and 144, and their respective dependent claims, based on Hitchcock and Gray. Consequently, the Section 103 rejection in the Final Office Action should be reversed.

**Conclusion**

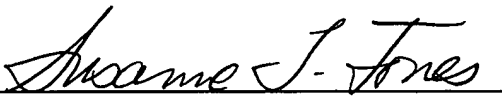
For the reasons explained above, the Final Office Action has not established a *prima facie* case of obviousness and the Section 103 rejection of claims 1, 3-9, 11-17, 22-51, 60-67, 70-83, 85-91, 96-108, 110, 112-116, 118-121, 123, 132, 133, 135-141, 144-156, 158-164, 169-182, 184-192, 194, 203, 204, and 206-212 should be reversed.

To the extent any extension of time under 37 C.F.R. § 1.136 is required to obtain entry of this Appeal Brief, such extension is hereby respectfully requested. If there are any fees due under 37 C.F.R. §§ 1.16 or 1.17 which are not enclosed herewith, including any fees required for an extension of time under 37 C.F.R. § 1.136, please charge such fees to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,  
GARRETT & DUNNER, L.L.P.

Dated: May 24, 2005

By:   
Susanne T. Jones  
Reg. No. 44,472

**Appealed Claims Appendix to Appeal Brief Under Rule 41.37(c)(1)(viii)**



1. A device for applying a product, the device comprising:

a first portion defining a recess;

a second portion moveable with respect to the first portion so as to selectively

place the device in one of a closed position and an open position, wherein the first

portion and the second portion define a substantially closed reservoir when the device is

in the closed position; and

an application member attached to the second portion, the application member being at least partially compressible and configured such that, when the device is in the closed position, the application member is at least partially compressed inside the substantially closed reservoir and, when the device is moved from the closed position to the open position, the application member becomes substantially uncompressed,

wherein the application member is configured so that when the application member is uncompressed, the application member is capable of being loaded with substantially all of an amount of product that the device is capable of containing.

3. The device of claim 1, wherein the application member is attached to the second portion by at least one of bonding, welding and clipping.

4. The device of claim 1, wherein the application member comprises a compressible porous material.

5. The device of claim 4, wherein the application member is made of at least one of an open-cell foam, a semi-open-cell foam, a felt, and a frit.

6. The device of claim 4, wherein the application member is made from a material chosen from polyurethanes, polyesters, polyethers, polyvinyl chlorides, and ethylene vinyl acetates.

7. The device of claim 4, wherein the porous material is one of hydrophilic and lipophilic.

8. The device of claim 1, wherein the application member comprises an additive capable of absorbing at least one of water and oil.

9. The device of claim 1, wherein the application member comprises a preservative.

11. The device of claim 1, wherein the substantially closed reservoir comprises the recess and at least a part of the second portion.

12. The device of claim 1, wherein the first portion comprises a housing portion defining the recess.



13. The device of claim 1, wherein the first portion comprises at least one of a metallic material, a metalloplastic complex, and a thermoplastic material.

14. The device of claim 13, wherein the metallic material comprises aluminum.

15. The device of claim 13, wherein the thermoplastic material is chosen from polyethylenes, polypropylenes, polyethylene terephthalates, polyvinyl chlorides, polyacrylates, and polyamides.

16. The device of claim 1, wherein the first portion is made by one of pressing, thermoforming, and injection molding.

17. The device of claim 1, wherein the second portion is attached to the first portion.

22. The device of claim 1, wherein the second portion comprises a film seal formed of at least one layer of at least one of a thermoplastic material, a metallic material, and a metalloplastic complex.

23. The device of claim 22, wherein the thermoplastic material is chosen from polyethylenes, polypropylenes, polyethylene terephthalates, and polyvinyl chlorides.

24. The device of claim 22, wherein the metallic material is chosen from aluminums, aluminum alloys, and brasses.

25. The device of claim 22, wherein the application member is attached to the second portion.

26. The device of claim 25, wherein the film seal has a flexibility such that it is configured to deform with the application member during application of product to a surface.

27. The device of claim 22, wherein the film seal is attached to the first portion by one of hot bonding, cold bonding, and welding.

28. The device of claim 22, wherein the film seal is attached to the first portion by one of a line of welding and a line of adhesive that substantially continuously surrounds the application member.

29. The device of claim 1, wherein the first portion and the second portion each comprise a sheet.

30. The device of claim 29, wherein each sheet comprises at least one layer made of at least one of a thermoplastic material, a metallic material, and a metalloplastic complex.

31. The device of claim 30, wherein the thermoplastic material is chosen from polyethylenes, polypropylenes, polyethylene terephthalates, and polyvinyl chlorides.

32. The device of claim 30, wherein the metallic material is chosen from aluminums, aluminum alloys, and brasses.

33. The device of claim 29, wherein the sheets are superposed and attached together along their respective peripheral regions.

34. The device of claim 33, wherein the sheets form a sachet.

35. The device of claim 33, wherein the device is placed in the open position by separating the first portion and the second portion from one another.

36. The device of claim 1, further comprising a product contained in the device.

37. The device of claim 36, wherein the product is contained in the substantially closed reservoir when the device is in the closed position.
38. The device of claim 36, wherein the product is chosen from a make-up product and a care product.
39. The device of claim 38, wherein the product is a cosmetic product.
40. The device of claim 36, wherein the product is intended for application to at least one of skin, hair, a fingernail, and a toenail.
41. The device of claim 36, wherein the product comprises one of a liquid, a gel, a cream, and a powder.
42. An application system comprising:  
a plurality of the devices of claim 1.
43. The system of claim 42, wherein the plurality of devices are removably joined together.
44. The system of claim 43, wherein the plurality of devices are joined together by at least one frangible portion.

45. The system of claim 42, wherein each of the plurality of devices contains a product intended for application to a surface.

46. The system of claim 45, wherein each of the plurality of devices contains differing products.

47. The system of claim 45, wherein each of the plurality of devices contains substantially the same product.

48. The system of claim 45, wherein the product is intended for application to one of hair, skin, a fingernail, and a toenail.

49. The system of claim 45, wherein the product is chosen from a make-up product and a care product.

50. The system of claim 49, wherein the product is a cosmetic product.

51. The system of claim 45, wherein the product comprises one of a liquid, a gel, a cream, and a powder.

60. A method for applying a product to a surface, the method comprising:  
providing the device of claim 1, wherein the device contains a product intended to be applied to a surface;

moving the device from the closed position to the open position; and  
placing the application member in contact with the surface so as to apply product loaded on the application member to the surface.

61. The method of claim 60, wherein the product is chosen from a make-up product and a care product.

62. The method of claim 61, wherein the product is a cosmetic product.

63. The method of claim 60, wherein the product comprises one of a liquid, a gel, a cream, and a powder.

64. The method of claim 60, wherein the placing of the application member in contact with the surface comprises placing the application member in contact with one of hair, skin, a fingernail, and a toenail.

65. The method of claim 60, wherein the placing of the application member in contact with the surface comprises applying substantially all of the product loaded on the application member to the surface.

66. The method of claim 60, further comprising at least partially filling the device with the product.

67. The method of claim 66, wherein the filling of the device with the product is performed by other than a user of the device.

70. The device of claim 1, wherein the application member is at least partially absorbent.

71. A device for applying a product, the device comprising:  
a first portion comprising an impermeable surface, the first portion defining a recess;  
a second portion moveable with respect to the first portion so as to selectively place the device in one of a closed position and an open position, wherein, in the closed position, the recess of the first portion and the second portion define a substantially closed reservoir, the substantially closed reservoir containing a cosmetic product intended for application to a surface; and  
an application member attached to the second portion, the application member being at least partially compressible and configured to be in contact with the impermeable surface and at least partially compressed inside the substantially closed reservoir when the device is in the closed position.

72. The device of claim 71, wherein, when the device is moved from the closed position to the open position, the application member becomes substantially uncompressed.

73. The device of claim 71, wherein the application member is configured to absorb at least some of the product contained in the reservoir.

74. The device of claim 73, wherein the application member is configured to absorb substantially all of the product contained in the reservoir.

75. The device of claim 74, wherein the application member is configured to absorb at least some of the product contained in the reservoir when the device is in the closed position, and wherein the application member is further configured to absorb substantially any remaining product in the reservoir when the device is moved from the closed position to the open position.

76. The device of claim 75, wherein the application member is configured to absorb the remaining product via expansion of the application member from the at least partially compressed configuration to a substantially uncompressed configuration.

77. The device of claim 71, wherein the application member is attached to the second portion by at least one of bonding, welding or clipping.

78. The device of claim 71, wherein the application member comprises a compressible porous material.

79. The device of claim 78, wherein the application member is made of at



least one of an open-cell foam, a semi-open-cell foam, a felt, and a frit.

80. The device of claim 78, wherein the application member is made from a material chosen from polyurethanes, polyesters, polyethers, polyvinyl chlorides, and ethylene vinyl acetates.

81. The device of claim 78, wherein the porous material is one of hydrophilic and lipophilic.

82. The device of claim 71, wherein the application member comprises an additive capable of absorbing at least one of water and oil.

83. The device of claim 71, wherein the application member comprises a preservative.

85. The device of claim 71, wherein the substantially closed reservoir comprises the recess and at least a part of the second portion.

86. The device of claim 71, wherein the first portion comprises a housing portion defining the recess.

87. The device of claim 71, wherein the first portion is made of at least one of a metallic material, a metalloplastic complex, and a thermoplastic material.

88. The device of claim 87, wherein the metallic material comprises aluminum.

89. The device of claim 87, wherein the thermoplastic material is chosen from polyethylenes, polypropylenes, polyethylene terephthalates, polyvinyl chlorides, polyacrylates, and polyamides.

90. The device of claim 71, wherein the first portion is made by one of pressing, thermoforming, and injection molding.

91. The device of claim 71, wherein the second portion is attached to the first portion.

96. The device of claim 71, wherein the second portion comprises a film seal formed of at least one layer of at least one of a thermoplastic material, a metallic material, and a metalloplastic complex.

97. The device of claim 96, wherein the thermoplastic material is chosen from polyethylenes, polypropylenes, polyethylene terephthalates, and polyvinyl chlorides.

98. The device of claim 96, wherein the metallic material is chosen from

aluminums, aluminum alloys, and brasses.

99. The device of claim 96, wherein the film seal has a flexibility such that it is configured to deform with the application member during application of product to a surface.

100. The device of claim 96, wherein the film seal is attached to the first portion by one of hot bonding, cold bonding, and welding.

101. The device of claim 96, wherein the film seal is attached to the first portion by one of a line of welding and a line of adhesive that substantially continuously surrounds the application member.

102. The device of claim 71, wherein the first portion and the second portion each comprise a sheet.

103. The device of claim 102, wherein each sheet comprises at least one layer made of at least one of a thermoplastic material, a metallic material, and a metalloplastic complex.

104. The device of claim 103, wherein the thermoplastic material is chosen from polyethylenes, polypropylenes, polyethylene terephthalates, and polyvinyl chlorides.

105. The device of claim 104, wherein the metallic material is chosen from aluminums, aluminum alloys, and brasses.

106. The device of claim 102, wherein the sheets are superposed and attached together along their respective peripheral regions.

107. The device of claim 106, wherein the sheets form a sachet.

108. The device of claim 106, wherein the device is placed in the open position by separating the first portion and the second portion from one another.

110. The device of claim 71, wherein the cosmetic product is chosen from a make-up product and a care product.

112. The device of claim 71, wherein the cosmetic product is intended for application to at least one of skin, hair, a fingernail, and a toenail.

113. The device of claim 71, wherein the cosmetic product comprises one of a liquid, a gel, a cream, and a powder.

114. An application system comprising:

a plurality of the devices of claim 71.

115. The system of claim 114, wherein the plurality of devices are removably joined together.

116. The system of claim 115, wherein the plurality of devices are joined together by at least one frangible portion.

118. The system of claim 114, wherein each of the devices contains a differing cosmetic product.

119. The system of claim 114, wherein each of the devices contains substantially the same cosmetic product.

120. The system of claim 114, wherein the cosmetic product is intended for application to one of hair, skin, a fingernail, and a toenail.

121. The system of claim 114, wherein the cosmetic product is chosen from a make-up product and a care product.

123. The system of claim 114, wherein the cosmetic product comprises one of a liquid, a gel, a cream, and a powder.

132. A method for applying a product to a surface, the method comprising:  
providing the device of claim 71;  
moving the device from the closed position to the open position; and  
placing the application member in contact with the surface so as to apply at least  
some of the product to the surface.

133. The method of claim 132, wherein the product is chosen from a make-up  
product and a care product.

135. The method of claim 132, wherein the product comprises one of a liquid,  
a gel, a cream, and a powder.

136. The method of claim 132, wherein the placing of the application member  
in contact with the surface comprises placing the application member in contact with  
one of hair, skin, a fingernail, and a toenail.

137. The method of claim 132, wherein the placing of the application member  
in contact with the surface comprises applying substantially all of the product contained  
in the reservoir to the surface.

138. The method of claim 132, wherein the moving of the device from the  
closed position to the open position comprises expanding the application member from

the at least partially compressed configuration to a substantially uncompressed configuration.

139. The method of claim 138, wherein the application member is configured to absorb at least some of the product disposed in the reservoir when the device is in the closed position, and wherein the expanding of the application member permits the application member to absorb substantially all of any remaining of product in the reservoir.

140. The method of claim 132, further comprising at least partially filling the reservoir with the product.

141. The method of claim 140, wherein the filling of the reservoir with the product is performed by other than a user of the device.

144. A device for applying a product, the device comprising:  
a first portion comprising an impermeable surface, the first portion defining a recess;  
a second portion moveable with respect to the first portion so as to selectively place the device in one of a closed position and an open position, wherein, in the closed position, the recess of the first portion and the second portion define a substantially closed reservoir; and

an application member attached to the second portion, the application member being at least partially compressible and configured such that, when the device is in the closed position, the application member is at least partially compressed inside the substantially closed reservoir,

wherein the reservoir contains a layer of cosmetic product intended to be applied to a surface, the layer of cosmetic product contacting both the application member and the impermeable surface.

145. The device of claim 144, wherein, when the device is moved from the closed position to the open position, the application member becomes substantially uncompressed.

146. The device of claim 144, wherein the application member is configured to absorb at least some of the product contained in the reservoir.

147. The device of claim 146, wherein the application member is configured to absorb substantially all of the product contained in the reservoir.

148. The device of claim 147, wherein the application member is configured to absorb at least some of the product contained in the reservoir when the device is in the closed position, and wherein the application member is further configured to absorb substantially any remaining product contained in the reservoir when the device is moved



from the closed position to the open position.

149. The device of claim 148, wherein the application member is configured to absorb the remaining product via expansion of the application member from the at least partially compressed configuration to a substantially uncompressed configuration.

150. The device of claim 144, wherein the application member is attached to the second portion by at least one of bonding, welding, and clipping.

151. The device of claim 144, wherein the application member comprises a compressible porous material.

152. The device of claim 151, wherein the application member is made of at least one of an open-cell foam, a semi-open-cell foam, a felt, and a frit.

153. The device of claim 151, wherein the application member is made from a material chosen from polyurethanes, polyesters, polyethers, polyvinyl chlorides, and ethylene vinyl acetates.

154. The device of claim 151, wherein the porous material is one of hydrophilic and lipophilic.

155. The device of claim 151, wherein the application member comprises an

additive capable of absorbing at least one of water and oil.

156. The device of claim 151, wherein the application member comprises a preservative.

158. The device of claim 144, wherein the substantially closed reservoir comprises the recess and at least a part of the second portion.

159. The device of claim 144, wherein the first portion comprises a housing portion defining the recess.

160. The device of claim 144, wherein the first portion is made of at least one of a metallic material, a metalloplastic complex, and a thermoplastic material.

161. The device of claim 160, wherein the metallic material comprises aluminum.

162. The device of claim 160, wherein the thermoplastic material is chosen from polyethylenes, polypropylenes, polyethylene terephthalates, polyvinyl chlorides, polyacrylates, and polyamides.

163. The device of claim 144, wherein the first portion is made by one of pressing, thermoforming, and injection molding.

164. The device of claim 144, wherein the second portion is attached to the first portion.

169. The device of claim 144, wherein the second portion comprises a film seal formed of at least one layer of at least one of a thermoplastic material, a metallic material, and a metalloplastic complex.

170. The device of claim 169, wherein the thermoplastic material is chosen from polyethylenes, polypropylenes, polyethylene terephthalates, and polyvinyl chlorides.

171. The device of claim 169, wherein the metallic material is chosen from aluminums, aluminum alloys, and brasses.

172. The device of claim 169, wherein the film seal has a flexibility such that it is configured to deform with the application member during application of product to a surface.

173. The device of claim 169, wherein the film seal is attached to the first portion by one of hot bonding, cold bonding, and welding.

174. The device of claim 169, wherein the film seal is attached to the first

portion by one of a line of welding and a line of adhesive that substantially continuously surrounds the application member.

175. The device of claim 144, wherein the first portion and the second portion each comprise a sheet.

176. The device of claim 175, wherein each sheet comprises at least one layer made of at least one of a thermoplastic material, a metallic material, and a metalloplastic complex.

177. The device of claim 176, wherein the thermoplastic material is chosen from polyethylenes, polypropylenes, polyethylene terephthalates, and polyvinyl chlorides.

178. The device of claim 177, wherein the metallic material is chosen from aluminums, aluminum alloys, and brasses.

179. The device of claim 175, wherein the sheets are superposed and attached together along their respective peripheral regions.

180. The device of claim 179, wherein the sheets form a sachet.

181. The device of claim 179, wherein the device is placed in the open

position by separating the first portion and the second portion from one another.

182. The device of claim 144, wherein the cosmetic product is chosen from a make-up product and a care product.

184. The device of claim 144, wherein the cosmetic product is intended for application to at least one of skin, hair, a fingernail, and a toenail.

185. The device of claim 144, wherein the cosmetic product comprises one of a liquid, a gel, a cream, and a powder.

186. An application system comprising:  
a plurality of the devices of claim 144.

187. The system of claim 186, wherein the plurality of devices are removably joined together.

188. The system of claim 187, wherein the plurality of devices are joined together by at least one frangible portion.

189. The system of claim 186, wherein each of the devices contains a differing cosmetic product.

190. The system of claim 186, wherein each of the devices contains substantially the same cosmetic product.

191. The system of claim 186, wherein the cosmetic product is intended for application to one of hair, skin, a fingernail, and a toenail.

192. The system of claim 186, wherein the cosmetic product is chosen from a make-up product and a care product.

194. The system of claim 186, wherein the cosmetic product comprises one of a liquid, a gel, a cream, and a powder.

203. A method for applying a product to a surface, the method comprising:  
providing the device of claim 144;  
moving the device from the closed position to the open position; and  
placing the application member in contact with the surface so as to apply product to the surface.

204. The method of claim 203, wherein the product is chosen from a makeup product and a care product.

206. The method of claim 203, wherein the product comprises one of a liquid, a gel, a cream, and a powder.

207. The method of claim 203, wherein the placing of the application member in contact with the surface comprises placing the application member in contact with one of hair, skin, a fingernail, and a toenail.

208. The method of claim 203, wherein the placing of the application member in contact with the surface comprises applying substantially all of the product disposed in the reservoir to the surface.

209. The method of claim 203, wherein the moving of the device from the closed position to the open position comprises expanding the application member from the at least partially compressed configuration to a substantially uncompressed configuration.

210. The method of claim 209, wherein the application member is configured to absorb at least some of the product disposed in the reservoir when the device is in the closed position, and wherein the expanding of the application member permits the application member to absorb substantially all of any remaining amount of product in the reservoir.

211. The method of claim 203, further comprising at least partially filling the reservoir with the product.

212. The method of claim 211, wherein the filling of the reservoir with the product is performed by other than a user of the device.



**Evidence Appendix to Appeal Brief Under Rule 41.37(c)(1)(ix)**

None.

**Related Proceedings Appendix to Appeal Brief Under Rule 41.37(c)(1)(x)**

None.